

ESTATE OF DENNIS DELGADILLO (DELG)

(Unallotted Pueblo, Deceased)

IBIA 73-21

Decided January 30, 1974

Appeal from an Administrative Law Judge's decision after rehearing.

Affirmed.

Indian Probate: Claim Against Estate: Generally

A claim which was not filed within the time required by the regulations cannot be allowed.

Indian Probate: Claim Against Estate: Timely Filing: By Other Than U.S. Agency

A claim of a creditor filed after the date of the hearing must be rejected.

APPEARANCES: Edward S. Dunn, Esq., for appellant, Virginia Delgadillo Jacobson.

OPINION BY MR. WILSON

This matter comes before the Board on an appeal by Virginia Delgadillo Jacobson through her attorney, Edward S. Dunn, from an Administrative Law Judge's order affirming decision after rehearing pursuant to 43 CFR 4.291.

According to the record Dennis Delgadillo, hereinafter referred to as decedent, died intestate on March 16, 1968.

A hearing was held on June 13, 1968, by Hearing Examiner Kent R. Blaine (title since changed to Administrative Law Judge) to determine heirs or probate will and to consider creditor's claims. No claims were considered since none were filed. Thereafter, the examiner on June 28, 1968, issued an order determining heirs.

The appellant, pro se, on July 16, 1968, filed a petition for rehearing to consider her funeral claim in the amount of \$1,297.61

Administrative Law Judge John F. Curran on April 20, 1972, reheard the matter. Thereafter, on May 26, 1972, the Judge issued

an order from which the appeal herein was taken. In his order the Judge rejected the appellant's claim for funeral expenses on the grounds that it had not been timely filed under the regulations in force at the time of the hearing.

The appellant in her appeal alleges no error on the part of the Judge in his findings of May 26, 1972. Appellant in her appeal merely reiterates allegations made in her petition for rehearing dated July 16, 1968.

The regulations in force at the time of the hearing held on June 13, 1968 (25 CFR 15.23(e)), clearly precluded consideration of claims filed after the conclusion of the hearing. The cited section of the code, supra, reads as follows:

No claims filed after the conclusion of the hearing shall be considered unless the claimant can present satisfactory proof that he had no actual notice of the hearing and that he was not on the reservation or otherwise in the vicinity during the period when the public notices of the hearing were posted. (Emphasis supplied.)

The record clearly indicates the appellant appeared at the hearing held June 13, 1968, and served as the principal family witness. Her testimony, inter alia, included the following:

Q. [Examiner] Are there any debts or bills that should be considered as bills against this estate?

A. No, not that I know of.

The Department over the years has consistently rejected claims against Indian estates that have not been timely filed. Estate of Zate-kau-kau-komah (Frank Odlety), IA-145 (October 8, 1954); Estate of Oscar Bad Warrior, I-173 (April 11, 1955).

In the case at bar it is quite evident that the appellant's claim was not timely filed and the Board so finds. Accordingly, the appellant's appeal should be dismissed and the Judge's order of May 26, 1972, affirmed.

In view of the Board's finding we see no reason to pass on the merits of the appellant's request in the alternative that she be awarded decedent's land in lieu of her claim.

NOW, THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal filed by Virginia Delgadillo Jacobson is hereby DISMISSED and the Administrative Law Judge's decision of May 26, 1972, IS AFFIRMED.

This decision is final for the Department.

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Alexander H. Wilson, Member

I concur:

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David J. McKee, Chairman